

# FERMILAB SUBCONTRACT GENERAL PROVISIONS

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## DEFINITIONS

- 1.1** As used throughout this subcontract, the following terms shall have the meanings set forth below:
- (a) The term "Government" shall mean the Government of the United States acting through the United States Department of Energy or its successor.
  - (b) The term "Department" shall mean the United States Department of Energy or any duly authorized representative thereof.
  - (c) The term "Fermilab" shall mean Fermi Research Alliance, LLC, and includes the successor to or any duly authorized representatives thereof.

(d) Except as otherwise provided in this subcontract, the term "sub-subcontracts" includes purchase orders under this subcontract.

(e) "Manager" shall mean the person in charge of business services for Fermilab or his written designee.

**1.2** As used in any FL that is a part of this subcontract, the term "outlying areas" shall mean-

- (a) the Commonwealths of Puerto Rico and the Northern Mariana Islands;
- (b) the Territories of American Samoa, Guam, and the U.S. Virgin Islands; and
- (c) the minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

## 2. COVENANT AGAINST CONTINGENT FEES

**2.1** (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain this subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty Fermilab shall have the right to annul this subcontract without liability or, in its discretion to deduct from the subcontract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter. For purposes of this clause, the term "Government" includes "Fermilab."

## 3. SUB-SUBCONTRACTS FOR COMMERCIAL ITEMS

### 3.1 DEFINITIONS, AS USED IN THIS CLAUSE:

"Commercial item" has the meaning contained in the Federal Acquisition Regulation (FAR) 2.101, Definitions.

"Sub-subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or sub-subcontractor at any tier.

**3.2** To the maximum extent practicable, the Subcontractor shall incorporate, and shall require its sub-subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as

components of items to be supplied under this subcontract.

**3.3** Except to the extent required elsewhere in this subcontract or where necessary to establish the reasonableness of prices under FAR Subpart 15, the Subcontractor is not required to include any provisions other than clauses 6, 8, 11, 13, and 25 of this subcontract in any sub-subcontract at any tier for commercial items or nondevelopmental items that would be incorporated as components of items to be supplied under this subcontract.

**3.4** The Subcontractor shall include the terms of this clause, including this paragraph 3.4, in all sub-subcontracts awarded under this subcontract.

#### **4. CONVICT LABOR**

**4.1** Except as provided in paragraph 4.2 of this clause, the Subcontractor shall not employ in the performance of this subcontract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

**4.2** The Subcontractor is not prohibited from employing persons-

- (a) On parole or probation to work at paid employment during the term of their sentence;
- (b) Who have been pardoned or who have served their terms; or
- (c) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if-
  - (1) The worker is paid or is in an approved work training program on a voluntary basis;
  - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
  - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
  - (5) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

#### **5. FEDERAL, STATE AND LOCAL TAXES**

##### **5.1 AS USED IN THIS CLAUSE:**

- (a) "Contract date," means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
- (b) "All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.
- (c) "After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property

covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.

(d) "After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

(e) "Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the subcontract is performed wholly or partly in any of those areas.

**5.2** The subcontract price includes all applicable Federal, State, and local taxes and duties.

**5.3** The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.

**5.4** The subcontract price shall be decreased by the amount of any after-relieved Federal tax.

**5.5** The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of Fermilab.

**5.6** No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$ 250.

**5.7** The Subcontractor shall promptly notify Fermilab of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as Fermilab directs.

**5.8** Fermilab shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

#### **6. EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

##### **6.1 DEFINITIONS - AS USED IN THIS CLAUSE:**

"All employment openings," means all positions except executive and top management, those positions that will be filled from within the Subcontractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top management," means any employee -

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other

employees will be given particular weight;

- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran," means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Subcontractor's organization," means employment openings for which the Subcontractor will give no consideration to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran," means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran," means --

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability --
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era," means a person who --

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred --
  - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or
- (2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed --
  - (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

- (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

## 6.2 GENERAL.

- (a) The Subcontractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Subcontractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as --
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (iii) Rate of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
  - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Subcontractor including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (b) The Subcontractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

## 6.3 LISTING OPENINGS.

- (a) The Subcontractor shall immediately list all employment openings that exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract, and including those occurring at an establishment of the Subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
- (b) The Subcontractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive

orders or regulations concerning nondiscrimination in employment.

- (c) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent subcontracts. The Subcontractor may advise the State agency when it is no longer bound by this subcontract clause.

**6.4 APPLICABILITY.** This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

**6.5 POSTINGS.**

- (a) The Subcontractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (b) The employment notices shall –
  - (i) State the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
  - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through Fermilab.
- (c) The Subcontractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (d) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other subcontract understanding, that the Subcontractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

**6.6 NONCOMPLIANCE.** If the Subcontractor does not comply with the requirements of this clause, Fermilab or the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

**6.7 SUB-SUBCONTRACTS.** The Subcontractor shall insert the terms of this clause in all sub-contracts or purchase orders of \$100,000 or more unless exempt by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

**7. NOTICE OF LABOR DISPUTES**

**7.1** If the Subcontractor has knowledge that any actual or

potential labor dispute is delaying or threatens to delay the timely performance of this subcontract, the Subcontractor shall immediately give notice, including all relevant information, to Fermilab.

**7.2** The Subcontractor agrees to insert the substance of this clause, including this paragraph 7.2, in any sub-subcontract to which a labor dispute may delay the timely performance of this subcontract; except that each sub-subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the sub-subcontractor shall immediately notify the next higher tier sub-subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

**8. UTILIZATION OF SMALL BUSINESS CONCERNS**

**8.1** It is the policy of the United States, the Department, and Fermilab that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing subcontracts let by Fermilab, including subcontracts and sub-subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

**8.2** The Subcontractor hereby agrees to carry out this policy in the awarding of sub-subcontracts to the fullest extent consistent with efficient subcontract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department as may be necessary to determine the extent of the Subcontractor's compliance with this clause.

**8.3 DEFINITIONS, AS USED IN THIS SUBCONTRACT:**  
"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern" –

(1) Means a small business concern –

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer, that –

(1) It has received certification as a small disadvantaged

business concern consistent with 13 CFR part 124, Subpart B;

- (2) No material change in disadvantaged ownership and control has occurred since its certification;
- (3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net). "Veteran-owned small business concern" means a small business concern --
  - (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
  - (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern --

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

**8.4** Subcontractors acting in good faith may rely on written representations by their sub-subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

## **9. ASSIGNMENT**

Neither this subcontract nor any interest therein nor claim thereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by Fermilab. Fermilab may assign the whole or any part of this subcontract to the Government or its designee or to a successor contractor, and in such event this subcontract shall continue in full force and effect.

## **10. AUDIT AND RECORDS**

**10.1** This clause applies if this subcontract exceeds \$100,000.

**10.2** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**10.3 EXAMINATION OF COSTS.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and Fermilab, or an authorized representative of Fermilab, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the subcontract.

**10.4 COST OR PRICING DATA.** If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, Fermilab, or an authorized representative of Fermilab, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to --

- (1) The proposal for the subcontract, sub-subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the subcontract, sub-subcontract, or modification; or
- (4) Performance of the subcontract, sub-subcontract or modification.

**10.5 COMPTROLLER GENERAL.** -- (a) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a sub-subcontract hereunder. (b) This paragraph may not be construed to require the Subcontractor or sub-subcontractor to create or maintain any record that the Subcontractor or sub-subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**10.6 REPORTS.** If the Subcontractor is required to furnish cost, funding, or performance reports, Fermilab or an authorized representative of Fermilab shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (a) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objective of these reports and (b) the data reported.

**10.7 AVAILABILITY.** The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs 10.2 through 10.6 of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition --

- (a) If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (b) Records relating to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such litigation or claims are finally resolved.

**10.8** The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph 10.8, in all sub-subcontracts under this subcontract that exceed \$100,000, and --

- (a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (b) For which cost or pricing data are required; or
- (c) That require the sub-subcontractor to furnish reports as discussed in paragraph 10.6 of this clause.

The clause may be altered only as necessary to identify properly the contracting parties.

## 11. EQUAL OPPORTUNITY

**11.1** *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, America Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

**11.2** If, during any 12-month period (including the 12 months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

**11.3** If the Subcontractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Subcontractor's activities (41 CFR 60-1.5).

**11.4** During performance of this subcontract, the Subcontractor agrees as follows:

- (a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.
- (b) The Subcontractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to:
  - (i) Employment
  - (ii) Upgrading;
  - (iii) Demotion;
  - (iv) Transfer;
  - (v) Recruitment or recruitment advertising;
  - (vi) Layoff or termination;
  - (vii) Rates of pay or other forms of compensation; and
  - (viii) Selection for training, including apprenticeship.
- (c) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by Fermilab that explain this clause.
- (d) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, the notice, to be provided by Fermilab, advising the labor union or workers representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Subcontractor shall furnish to Fermilab all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the

Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Subcontractor has filed within the 12 months preceding the date of subcontract award, the Subcontractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

- (h) The Subcontractor shall permit access to its premises, during normal business hours, by Fermilab, or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit Fermilab or the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
- (i) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be cancelled, terminated, or suspended, in whole or in part, and the Subcontractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (j) The Subcontractor shall include the terms and conditions of this clause in every sub-subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each sub-subcontractor or vendor.
- (k) The Subcontractor shall take such action with respect to any sub-subcontract or purchase order as Fermilab, may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a sub-subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.

**11.4** Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

## 12. APPLICABLE LAW

To the extent that Federal law does not exist and state law could become applicable to this subcontract, the law of Illinois shall apply.

## 13. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

### 13.1 GENERAL:

- (a) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as –

- (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, line of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (b) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

### **13.2 POSTINGS.**

- (a) The Subcontractor agrees to post employment notices stating (i) the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and (ii) the rights of applicants and employees.
- (b) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to visually disabled individual, or may lower the posted notice so that it may be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary), and shall be provided by or through Fermilab.
- (c) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

**13.3 NONCOMPLIANCE.** If the Subcontractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

**13.4 SUB-SUBCONTRACTS.** The Subcontractor shall include the terms of this clause in every sub-subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

### **14. MODIFICATION PROPOSALS – PRICE BREAKDOWN**

**14.1** The Subcontractor, in connection with any proposal he makes for a subcontract modification, shall furnish a price breakdown, itemized as required by Fermilab. Unless otherwise

directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, sub-subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for sub-subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The justification shall be furnished by the date specified by Fermilab.

**14.2** When costs are a factor in any determination of a subcontract price adjustment under any clause of this subcontract, such costs shall be in accordance with the contract cost principles and procedures in Subpart 31.2 of the Federal Acquisition Regulation (48 CFR 31.2) and Subpart 931.2 of the Department's Acquisition Regulation in effect on the date of this subcontract.

### **15. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

**15.1** Unless advance authorization has been obtained by Fermilab from the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

**15.2** Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

**15.3** The Subcontractor shall insert this clause, including this paragraph 15.3, in all subcontracts.

### **16. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

**16.1** Unless the Subcontractor is a State or local government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on –

- (a) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Subcontractor by job category and hiring location; and
- (b) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
- (c) The maximum number and the minimum number of employees of the Subcontractor during the period covered by the report.

**16.2** The Subcontractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans Employment Report (VETS-100 Report)."

**16.3** The Subcontractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

**16.4** The employment activity report required by paragraph 16.1(b) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the

employment profile report required by paragraph 16.1(a) of this clause. Subcontractors may select an ending date --

- (a) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
- (b) As of December 31, if the Subcontractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

**16.5** The Subcontractor shall base the count of veterans reported according to paragraph 16.1 of this clause on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that --

- (a) The information is voluntarily provided;
- (b) The information will be kept confidential;
- (c) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
- (d) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

**16.6** The Subcontractor shall insert the terms of this clause in all sub-subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

## **17. FERMILAB-FURNISHED PROPERTY**

### **17.1 FERMILAB PROPERTY.**

- (a) Fermilab shall deliver to the Subcontractor, for use in connection with and under the terms of this subcontract, the Fermilab-furnished property described elsewhere in the subcontract together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Fermilab-furnished property").
- (b) The delivery or performance dates for this subcontract are based upon the expectation that Fermilab-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated elsewhere in the subcontract or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
- (c) If Fermilab-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify Fermilab, detailing the facts, and, as directed by Fermilab and at Fermilab expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Subcontractor, Fermilab shall make an equitable adjustment as provided in paragraph 17.8 of this clause.
- (d) If Fermilab-furnished property is not delivered to the Subcontractor by the required time, Fermilab shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph 17.8 of this clause.

### **17.2 CHANGES IN FERMILAB-FURNISHED PROPERTY.**

- (a) Fermilab may, by written notice,
  - (i) decrease the Fermilab-furnished property provided

or to be provided under this subcontract, or

- (ii) substitute other Fermilab-furnished property for the property to be provided by Fermilab, or to be acquired by the Subcontractor for Fermilab, under this subcontract. The Subcontractor shall promptly take such action as Fermilab may direct regarding the removal, shipment, or disposal of the property covered by such notice.

- (b) Upon the Subcontractor's written request, Fermilab shall make an equitable adjustment to the subcontract in accordance with paragraph 17.8 of this clause, if Fermilab has agreed in the subcontract to make the property available for performing this subcontract and there is any --

- (i) Decrease or substitution in this property pursuant to subparagraph 17.2(a) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

### **17.3 TITLE IN GOVERNMENT PROPERTY.**

- (a) The Government shall retain title to all Fermilab-furnished property.
- (b) All Fermilab-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Fermilab property"), are subject to the provisions of this clause. However, special tooling accountable to this subcontract is subject to the special tooling clause and is not subject to the provisions of this clause. Title to Fermilab-furnished property shall not be affected by its incorporation into or attachment to any property not owned by Fermilab, nor shall Fermilab-furnished property become a fixture or lose its identity as personal property by being attached to any real property.
- (c) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for Fermilab under this subcontract shall pass to and vest in the Government when its use in performing this subcontract commences or when Fermilab has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (d) If this subcontract contains a provision directing the Subcontractor to purchase material for which Fermilab will reimburse the Subcontractor as a direct item of cost under this subcontract --
  - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
  - (ii) Title to all other material shall pass to and vest in the Government upon --
    - a) Issuance of the material for use in subcontract performance;
    - b) Commencement of processing of the material or its use in subcontract performance; or
    - c) Reimbursement of the cost of the material by Fermilab, whichever occurs first.

**17.4 USE OF FERMILAB-FURNISHED PROPERTY.** The Fermilab-furnished property shall be used only for performing this subcontract, unless otherwise provided in this subcontract or approved by Fermilab.

### **17.5 PROPERTY ADMINISTRATION.**

- (a) The Subcontractor shall be responsible and accountable for all Fermilab-furnished property provided under this



subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this subcontract.

- (b) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Fermilab-furnished property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.
- (c) If damage occurs to Fermilab-furnished property, the risk of which has been assumed by Fermilab under this subcontract, Fermilab shall replace the items or the Subcontractor shall make such repairs as Fermilab directs. However, if Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by Fermilab. When any property for which Fermilab is responsible is replaced or repaired, Fermilab shall make an equitable adjustment in accordance with paragraph 17.8 of this clause.
- (d) The Subcontractor represents that the subcontract price does not include any amount for repairs or replacement for which Fermilab is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

**17.6 ACCESS.** Fermilab and all its designees shall have access at all reasonable times to the premises in which any Fermilab-furnished property is located for the purpose of inspecting the Fermilab-furnished property.

**17.7 RISK OF LOSS.** Unless otherwise provided in this subcontract, the Subcontractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Fermilab-furnished property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph 17.3 of this clause. However, the Subcontractor is not responsible for reasonable wear and tear to Fermilab-furnished property or for Fermilab-furnished property properly consumed in performing this subcontract.

**17.8 EQUITABLE ADJUSTMENT.** When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, Fermilab may initiate an equitable adjustment in favor of Fermilab. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. Fermilab shall not be liable to suit for breach of subcontract for --

- (i) Any delay in delivery of Fermilab-furnished property;
- (ii) Delivery of Fermilab-furnished property in a condition not suitable for its intended use;
- (iii) A decrease in or substitution of Fermilab-furnished property; or
- (iv) Failure to repair or replace Fermilab-furnished property for which Fermilab is responsible.

**17.9 FINAL ACCOUNTING AND DISPOSITION OF FERMILAB-FURNISHED PROPERTY.** Upon completing this subcontract, or at such earlier dates as may be fixed by Fermilab, the Subcontractor shall submit, in a form acceptable to Fermilab, inventory schedules covering all items of Fermilab-furnished property (including any resulting scrap) not consumed in performing this subcontract or delivered to Fermilab. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Fermilab-furnished property as may be directed or authorized by Fermilab. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid to Fermilab as it directs.

**17.10 ABANDONMENT AND RESTORATION OF SUB-CONTRACTOR'S PREMISES.** Unless otherwise provided

herein, Fermilab --

- (a) May abandon any Fermilab-furnished property in place, at which time all obligations of Fermilab regarding such abandoned property shall cease; and
- (b) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if Fermilab-furnished property is withdrawn or is unsuitable for the intended use, or if other Fermilab-furnished property is substituted, then the equitable adjustment under paragraph 17.8 of this clause may properly include restoration or rehabilitation costs.

**17.11 COMMUNICATIONS.** All communications under this clause shall be in writing.

## **18. INDEPENDENT CONTRACTOR**

In all respects pertaining to this subcontract the Subcontractor is, and shall act as an independent Subcontractor and the Subcontractor shall not be or act as the agent, employee or servant of Fermilab or the Government.

Without limiting the generality of the foregoing it is understood and agreed:

- (1) that all persons employed by the Subcontractor in the performance of this agreement shall be employees of the Subcontractor and not employees of Fermilab or the Government, and
- (2) that the Subcontractor shall not enter into any contract with a third party which purports to obligate or bind Fermilab or the Government.

## **19. CERTIFIED COST OR PRICING DATA**

- 19.1** (a) The Subcontractor shall require under the situations described in (b) below, unless exempted under the exceptions set forth in (c) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.
- (b) Except as provided in (c) below, certified cost or pricing data shall be submitted prior to
    - (i) the award of each sub-subcontract, the price of which is expected to exceed \$650,000 and
    - (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed \$650,000.
  - (c) Certified cost or pricing data need not be furnished pursuant to this paragraph (c) where:
    - (i) the Subcontractor has not been required to furnish cost or pricing data; or
    - (ii) the price adjustment is based on adequate price competition, the acquisition of commercial items, or the prices are set by law or regulation; and the Subcontractor states in writing the basis for applying this exception.
  - (d) In submitting the cost or pricing data, the sub-subcontractor shall use the format set forth in paragraph 19.2 below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor, or the Subcontractor, as applicable, for retention.

**19.2** The certificates required by this clause shall follow the format set forth below:

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to Fermilab in support of \_\_\_\_\_\*

are accurate, complete, and current as of \_\_\_\_\_\*\*

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreement.

FIRM \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE OF EXECUTION\*\*\* \_\_\_\_\_

\* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the price was agreed to.

**19.3** For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract or any subcontract change or other modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$650,000 were accurate, complete, and current, Fermilab, the Department or any of its authorized representatives shall until the expiration of three (3) years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

**19.4** Whenever the price of any change or other modification to this subcontract involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$650,000, the Subcontractor agrees to furnish Fermilab certified cost or pricing data, using the format set forth in paragraph 19.2 above unless the price is based on adequate price competition, the acquisition of commercial items, or prices set by law or regulation.

**19.5** The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification results from a change or modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation, unless the price for such change or other modification becomes reimbursable under the subcontract.

**19.6** The Subcontractor agrees to insert paragraph 19.3 without change and the substance of paragraphs 19.1, 19.2, 19.4, 19.5, and 19.6 of this clause in each sub-subcontract hereunder in excess of \$650,000 and in each sub-subcontract of \$650,000 or less at the time of making a change or other modification thereto which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$650,000.

**19.7** If Fermilab determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the subcontract shall be modified in writing to reflect such reduction.

**20. RESTRICTIONS ON SUB-SUBCONTRACTOR SALES TO THE GOVERNMENT**

(applicable only if this subcontract exceeds \$100,000)

**20.1** Except as provided in 20.2 below, the Subcontractor shall not enter into any agreement with an actual or prospective sub-subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such sub-subcontractors directly to the Government of any item or process (including computer software) made or furnished by the sub-subcontractor under this subcontract or under any follow-on production subcontract.

**20.2** The prohibition in 20.1 above does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

**20.3** The Subcontractor agrees to incorporate the substance of this clause, including this paragraph 20.3, in all sub-subcontracts that exceed \$100,000.

**21. ANTI-KICKBACK PROCEDURES**

(applicable only if this subcontract exceeds \$100,000)

**21.1** Definitions: "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier Subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.

**21.2** The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from --

- (a) Providing or attempting to provide or offering to provide any kickback;
- (b) Soliciting, accepting, or attempting to accept any kickback; or
- (c) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher tier Subcontractor.

**21.3** (a) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph 21.2 of this clause in its own operations and direct business relationships.

(b) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph 21.2 of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(c) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph 21.2 of this clause.

(d) The Manager may --

- (i) Offset the amount of the kickback against any monies owed by Fermilab under this subcontract and/or
- (ii) Direct that the Subcontractor withhold from sums owed the sub-subcontractor under the prime contract, the amount of the kickback. The Manager may order that monies withheld under subdivision 21.3(d)(i) of this clause be paid over to Fermilab unless Fermilab has already offset those monies under subdivision 21.3(d)(ii) of this clause. In either case, the Subcontractor shall notify the Manager when the monies are withheld.

(c) The Subcontractor agrees to incorporate the substance of this clause, including this subparagraph 21.3(c), but excepting subparagraph 21.3(a), in all sub-subcontracts that exceed \$100,000.

## **22. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION**

(applicable only if this subcontract exceeds \$100,000)

**22.1** This subcontract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

**22.2 OVERTIME REQUIREMENTS.** No Subcontractor or sub-subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

**22.3 VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES.** The responsible Subcontractor and sub-subcontractor are liable for unpaid wages if they violate the

terms in paragraph 22.2 of this clause. In addition, the Subcontractor and sub-subcontractor are liable for liquidated damages payable to the Government. Liquidated damages will be assessed at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

**22.4 WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES.** Sufficient funds required to satisfy any Subcontractor or sub-subcontractor liabilities for unpaid wages and liquidated damages will be withheld from payments due under the subcontract. If amounts withheld under the subcontract are insufficient to satisfy Subcontractor or sub-subcontractor liabilities, payments from other Federal or Federally assisted subcontracts held by the same Subcontractor that are subject to the Contract Work Hours and Safety Standards Act may be withheld.

## **22.5 PAYROLLS AND BASIC RECORDS.**

(a) The Subcontractor and its sub-subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics working on the subcontract during the subcontract and shall make them available to Fermilab and the Government until 3 years after subcontract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(b) The Subcontractor and its sub-subcontractors shall allow authorized representatives of Fermilab, DOE or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph 22.5(a) of this clause. The Subcontractor or sub-subcontractor also shall allow authorized representatives of Fermilab, DOE or Department of Labor to interview employees in the workplace during working hours.

**22.6 SUB-SUBCONTRACTS.** The Subcontractor shall insert the provisions set forth in paragraphs 22.2 through 22.5 of this clause in sub-subcontracts that may require or involve the employment of laborers and mechanics and require sub-subcontractors to include these provisions in any such lower tier sub-subcontracts. The Subcontractor shall be responsible for compliance by any Sub-subcontractor or lower tier Sub-subcontractor with the provisions set forth in paragraphs 22.2 through 22.5 of this clause.

## **23. PREFERENCE FOR U.S. FLAG AIR CARRIERS**

**23.1** "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas (see paragraph 1.2).

"U.S. Flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

**23.2** Section 5 of the International Air Transportation Fare Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and Subcontractors use U.S. flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a

foreign-flag air carrier if a U.S. flag air carrier is available to provide such services.

**23.3** If available, the Subcontractor, in performing work under this subcontract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

**23.4** In the event that the Subcontractor selects a carrier other than a U.S. flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:

**STATEMENT OF UNAVAILABILITY OF  
U.S. FLAG AIR CARRIERS**

International air transportation of persons (and their personal effects) or property by U.S. flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

(State reasons): \_\_\_\_\_  
(End of Statement)

**23.5** The Subcontractor shall include the substance of this Paragraph, including this subparagraph 23.5, in each sub-subcontract or purchase order under this subcontract that may involve international air transportation.

**24. PROHIBITION OF SEGREGATED FACILITIES**

**24.1** "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

**24.2** The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this subcontract.

**24.3** The Subcontractor shall include this clause in every sub-subcontract and purchase order that includes the Equal Opportunity clause (see clause 11).

**25. PREFERENCE FOR PRIVATELY OWNED U.S.  
FLAG COMMERCIAL VESSELS**

**25.1** Except as provided in paragraph 25.5 of this clause, the Cargo Preference Act of 1954 (46 U.S.C. Appx 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S. flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -

- (a) Acquired for a U.S. Government agency account;
- (b) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (c) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

- (d) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

**25.2** The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph 25.1 above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

**25.3** (a) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) Fermilab and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street, SW, Washington, D.C. 20590. Sub-subcontractor bills of lading shall be submitted through Fermilab.

- (b) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
  - (A) Sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.
  - (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet if available.
  - (I) Total ocean freight revenue in U.S. dollars.

**25.4** The Subcontractor shall insert the substance of this clause, including this paragraph 25.4, in all sub-subcontracts or purchase orders under this subcontract, except those described in paragraph 25.5(d).

**25.5** The requirement in paragraph 25.1 does not apply to:

- (a) Cargoes carried in vessels as required or authorized by law or treaty;
- (b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
- (c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
- (d) Sub-subcontracts or purchase orders for the acquisition of commercial items unless -
  - (1) This subcontract is -
    - (A) A subcontract or agreement for ocean transportation services; or
    - (B) A construction subcontract; or
  - (2) The supplies being transported are -
    - (A) Items the Subcontractor is reselling or distributing to the Government without adding value. (Generally, the Subcontractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or
    - (B) Shipped in direct support of U.S. military -
      - (i) Contingency operations;
      - (ii) Exercises; or
      - (iii) Forces deployed in connection with United Nations or North Atlantic Treaty

**25.6** Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, Phone: 202-366-4610

**26. PROTECTING FERMILAB AND THE GOVERNMENT'S INTEREST WHEN SUB-SUBCONTRACTING WITH SUB-SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT**

**26.1** The Government suspends or debar Contractors to protect the interests of the Government and Fermilab. Subcontractor shall not enter into any sub-subcontract in excess of \$30,000 with a sub-subcontractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

**26.2** Subcontractor shall require each proposed first-tier sub-subcontractor whose sub-subcontract will exceed \$30,000, to disclose to the Subcontractor, in writing, whether as of the time of award of the sub-subcontract, the sub-subcontractor, or its principal is or is not debarred, suspended, or proposed for debarment by the Federal Government.

**26.3** A corporate officer or designee of the Subcontractor shall notify Fermilab, in writing, before entering into a sub-subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement and Nonprocurement Programs.) The notice must include the following:

- (a) The name of the sub-subcontractor;
- (b) Subcontractor's knowledge of the reasons for the sub-subcontractor being on the list of Parties Excluded from Procurement and Nonprocurement Programs;
- (c) The compelling reason(s) for doing business with the sub-subcontractor notwithstanding its inclusion on the list of Parties Excluded from Procurement and Nonprocurement Programs; and
- (d) The systems and procedures the Subcontractor has established to ensure that it is fully protecting Fermilab and the Government's interests when dealing with such sub-subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

**27. CONTROLLED SUBSTANCES (DRUG-FREE WORKPLACE)**

**27.1** This clause applies to all work performed at the Fermilab site.

**27.2** Employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while on the Fermilab site. A "controlled substance" means a controlled substance identified in Schedules I through V of Section 202 of the Federal Controlled Substances Act (21 U.S.C. 812) and as further defined in Federal Regulation at 21 CFR 1308.11-1308.15.

**27.3** The Subcontractor shall notify its employees working at Fermilab of this prohibition and of the disciplinary action that will be taken against employees violating the prohibition, and Subcontractor shall enforce this drug-free workplace policy, as well as implement other personnel assistance programs, as appropriate, to help ensure a drug-free workplace at Fermilab. Subcontractor employees shall be required to notify the Subcontractor of any criminal drug statute conviction for a violation that occurred in the Fermilab workplace within five (5) days of such a conviction and the Subcontractor shall, in turn, notify Fermilab within five (5) days of receiving employee's notice.

**28. PRINTING**

**28.1** To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

**28.2** The term "Printing" includes the following processes: composition, platemaking, presswork, binding,

microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

**28.3** Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed or a reduction in the subcontract price by an amount equalling the cost of the printing to the Subcontractor.

**28.4** In all sub-subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations and subsection 28.2), the Subcontractor shall include a provision substantially the same as this clause.

**29. NOTIFICATION OF OWNERSHIP CHANGES**

**29.1** This clause applies (1) if certified cost or pricing data was submitted by the Subcontractor in connection with the award of this subcontract, or (2) if the Subcontractor furnishes certified cost or pricing data under paragraph 19.4 of the clause entitled "Certified Cost or Pricing Data" in connection with a change or other modification to this subcontract.

**29.2** The Subcontractor shall make the following notifications in writing:

- (a) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify Fermilab within 30 days.
- (b) The Subcontractor shall also notify Fermilab within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

**29.3** The Subcontractor shall: (1) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide Fermilab or designated representative ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.

**29.4** The Subcontractor shall include the substance of this clause in all sub-subcontracts under this subcontract which meet the applicability requirement of FAR 15.408(k).

**30. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**  
(applicable only if this subcontract exceeds \$100,000)

**30.1 DEFINITIONS.**

"Agency," as used in this clause, means executive agency as defined in FAR 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal subcontract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal subcontract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government,” as used in this clause, means a unit of government in a State and, if charged, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency,” as used in this clause, included the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient,” as used in this clause, includes the Subcontractor and all sub-subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal subcontract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates

agency consideration of such person for receipt of such subcontract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, or an outlying area of the United States (see paragraph 1.2), an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

## 30.2 PROHIBITIONS.

(a) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions:

- (1) The awarding of any Federal subcontract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; or
- (5) The modification of any Federal subcontract, grant, loan, or cooperative agreement.

(b) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal subcontract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(A) The prohibitions on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities nor directly related to a covered Federal action.

(B) For purposes of subdivision 30.2(c)(1)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(i) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(ii) Technical discussions and other

activities regarding the application or adaptation of the person's products or services for an agency's use.

- (D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

- (i) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
- (ii) Technical discussions regarding the preparation of any unsolicited proposal prior to its official submission; and
- (iii) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

- (E) Only those agency and legislative liaison activities expressly authorized by subdivision 30.2(c)(1)(A) of this clause are permitted under this clause.

- (2) Professional and technical services.

- (A) The prohibition on the use of appropriated funds, in subparagraph 30.2(a) of this clause, does not apply in the case of -

- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
- (ii) Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision 30.2(c)(2)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or

proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a subcontract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

- (D) Only those professional and technical services expressly authorized by subdivisions 30.2(c)(2)(A)(i) and (ii) of this clause are permitted under this clause.

- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

### 30.3 DISCLOSURE.

- (a) The Subcontractor who requests or receives from Fermilab a Federal subcontract shall file with Fermilab a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph 30.2(a) of this clause, if paid for with appropriated funds.

- (b) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph 30.3(a) of this clause. An event that materially affects the accuracy of the information reported includes -

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(c) The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person which requests or received any sub-subcontract exceeding \$100,000 under the Federal subcontract.

(d) All sub-subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by Fermilab. Fermilab shall submit all disclosures to the Department of Energy at the end of the calendar quarter in which the disclosure form is submitted by the sub-subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor.

**30.4 AGREEMENT.** The Subcontractor agrees not to make any payment prohibited by the clause.

**30.5 PENALTIES.**

(a) Any person who makes an expenditure prohibited under paragraph 30.2 of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph 30.3 of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent Fermilab or the Federal Government from seeking any other remedy that may be applicable.

(b) Subcontractors may rely without liability on the representation made by their sub-subcontractors in the certification and disclosure form.

**30.6 COST ALLOWABILITY.** Nothing in this clause makes allowable or reasonable any cost which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

**31. SENSITIVE FOREIGN NATIONS CONTROLS**

**31.1** In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with any "Sensitive Foreign Nations Controls" requirements that may be attached to this subcontract, relating to those countries, which may from time to time, be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least 60 days' prior written notice to Fermilab if the Subcontractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding termination for convenience of Fermilab shall apply.

**31.2** The provisions of this clause shall be included in any sub-subcontracts.

**32. DISPLACED EMPLOYEE HIRING PREFERENCE**

(applicable only if this subcontract exceeds \$500,000)

**32.1** Definition: "Eligible employee" means a current or former employee of a contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause), (2) who has also met the eligibility criteria contained in the Department of Energy guidance for contractor work force restructuring, as may be amended or supplemented from time to time, and (3) who is qualified for a particular job vacancy with the Department or one of its contractors or subcontractors with respect to work under a prime contract with the Department at the time the particular position is available.

**32.2** Consistent with Department of Energy guidance for contractor work force restructuring, as may be amended or

supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this subcontract.

**32.3** The requirements of this clause shall be included in sub-subcontracts at any tier (except for sub-subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

**33. PERSONAL IDENTITY VERIFICATION OF SUBCONTRACTOR PERSONNEL**

**33.1** The Subcontractor shall comply with any personal identity verification procedures identified by Fermilab that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS-PUB) Number 201.

**33.2** The Subcontractor shall insert this clause 33 in all sub-subcontracts when the sub-subcontractor is required to have physical access to the Fermilab site or access to a Fermilab-provided Federal information system as part of performance of the work.

**34. DISPUTES.**

The parties agree that they will attempt in good faith to resolve through negotiation any dispute, claim, or, controversy arising out of or relating to the subcontract. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative dispute resolution (ADR). In the event that ADR fails or is not used, the parties may thereafter pursue any remedy they may have at law or in equity.

**35. SUBCONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT**

**35.1** *Definition.*

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

**35.2** *Code of business ethics and conduct.*

(a) Within 30 days after subcontract award, unless Fermilab establishes a longer time period, the Subcontractor shall--

- (i) Have a written code of business ethics and conduct; and
- (ii) Provide a copy of the code to each employee engaged in performance of the subcontract.

(b) The Subcontractor shall promote compliance with its code of business ethics and conduct.

**35.3** *Awareness program and internal control system for other than small businesses.* This paragraph 35.3 does not apply if the Subcontractor has represented itself as a small business concern pursuant to the award of this subcontract. The Subcontractor shall establish within 90 days after subcontract award, unless Fermilab establishes a longer time period--

(a) An ongoing business ethics and business conduct awareness program; and

(b) An internal control system.

(i) The Subcontractors internal control system shall--

(A) Facilitate timely discovery of improper conduct in connection with Fermilab or Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) For example, the Subcontractor's internal control system should provide for--

(A) Periodic reviews of company business practices, procedures, policies and internal controls for compliance with the Subcontractor's code of business ethics and conduct and the special requirements of Fermilab and Government contracting;



(B) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make reports;

(C) Internal and/or external audits, as appropriate; and

(D) Disciplinary action for improper conduct.

**35.4 Sub-subcontracts.** The Subcontractor shall include the substance of this clause, including this paragraph 35.4, in sub-subcontracts that have a value of \$5,000,000 and a performance period of more than 120 days, except when the sub-subcontract--

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

## **36. COMBATING TRAFFICKING IN PERSONS**

**36.1 Definitions.** As used in this clause--

"Coercion" means--

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the Contractor directly engaged in the performance of work under the contract who has other than the minimal impact or involvement in contract performance.

"Involuntary servitude" includes a condition of servitude induced by means of--

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

"Severe forms of trafficking in persons" means--

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

**36.2 Policy.** Fermilab and the United States Government have adopted a zero tolerance policy regarding trafficking in persons. Subcontractors and subcontractor employees shall not--

(1) Engage in severe forms of trafficking in persons during the period of performance of the subcontract;

(2) Procure commercial sex acts during the period of performance of the subcontract; or

(3) Use forced labor in the performance of the subcontract.

**36.3 Subcontractor requirements.** The subcontractor shall--

(1) Notify its employees of--

(i) Fermilab and the United States Government's zero tolerance policy described in paragraph 36.2 of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the subcontract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or sub-subcontractors that violate the policy in paragraph 36.2 of this clause.

**36.4 Notification.** The Subcontractor shall inform the Fermilab immediately of--

(1) Any information it receives from any source (including host country law enforcement) that alleges a subcontractor employee, sub-subcontractor, or sub-subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against subcontractor employees, sub-subcontractors, or sub-subcontractor employees pursuant to this clause.

**36.5 Remedies.** In addition to other remedies available to Fermilab or the Government, the Subcontractor's failure to comply with the requirements of paragraphs 36.3, 36.4, or 36.6 of this clause may render the subcontractor subject to--

(1) Required removal of a Subcontractor employee or employees from the performance of the contract;

(2) Required sub-subcontractor termination;

(3) Suspension of subcontract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which Fermilab or the Government determined Subcontractor non-compliance;

(5) Termination of the subcontract for default or cause, in accordance with the termination clause of this subcontract; or

(6) Suspension or debarment.

**36.6 Sub-subcontracts.** The Subcontractor shall include the substance of this clause, including this paragraph 36.6 in all subcontracts.

## **37. ENERGY EFFICIENCY IN ENERGY CONSUMING PRODUCTS**

**37.1 Definition.** As used in this clause--

"Energy-efficient product"

(1) Means a product that--

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-

consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259h).

**37.2** The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e. ENERGY STAR ® products or FEMP-designated products) at the time of subcontract award, for products that are--

- (1) Delivered;
- (2) Acquired by the Subcontractor for use in performing services at a Federally-controlled facility;
- (3) Furnished by the Subcontractor for use by Fermilab or the Government; or
- (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

**37.3** The requirements of paragraph 37.2 apply to the Subcontractor (including any sub-subcontractor) unless--

- (1) The energy-consuming product is not listed in the ENERGY STAR ® Program or FEMP; or
- (2) Otherwise approved in writing by Fermilab.

**37.4** Information about these products is available for--

- (1) ENERGY STAR ® at  
<http://www.energystar.gov/products>; and
- (2) FEMP at  
[http://www.ccrc.energy.gov/femp/procurement/ccp\\_requirements.html](http://www.ccrc.energy.gov/femp/procurement/ccp_requirements.html).